

SENSITIVE FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL 13L-02R
DATE RECEIVED: March 26, 2013
DATE ACTIVATED: June 24, 2013

EARLIEST SOL: July 31, 2016
LATEST SOL: July 31, 2016
ELECTION CYCLE: 2012

SOURCE:

Internally Generated

RESPONDENT:

California Real Estate Political Action
Committee/Federal – California Association of
Realtors and M. Iqbal Bholat in his official
capacity as treasurer (f/k/a California Real Estate
Political Action Committee/Federal)¹

RELEVANT STATUTES:

2 U.S.C. § 434(a)-(b)
11 C.F.R. § 104.1(a)
11 C.F.R. § 104.3(a)
11 C.F.R. § 111.43

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The California Real Estate Political Action Committee/Federal – California Association of Realtors and M. Iqbal Bholat in his official capacity as treasurer ("Committee") was referred to the Office of General Counsel ("OGC") for possible enforcement action after disclosing additional receipts of \$363,223.69, which were not disclosed on its original 2011 Mid-Year Report. In response, the Committee acknowledges that it was necessary to amend the report, but

¹ At the time of the referral, California Real Estate Political Action Committee/Federal was the name of the committee. On June 12, 2013, it filed an amended Statement of Organization indicating that its name had been changed to California Real Estate Political Action Committee/Federal – California Association of Realtors. See Amended Statement of Organization (June 12, 2013), http://query.nictusa.com/pdf/468_13962852468_13962852468.pdf?navpanes=0.

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1 states that the omission was caused by problems it encountered during its transition to a new
2 software program, and requests that the Commission close this matter without any further action.

3 Based on the available information, we recommend that the Commission open a matter
4 under review ("MUR") in connection with RR13L-02R and find reason to believe that the
5 Committee violated 2 U.S.C. § 434(b) by failing to accurately disclose receipts. Additionally,
6 we recommend that the Commission enter into pre-probable cause conciliation with the
7 Committee

8 II. FACTS

9 The Committee is the separate segregated fund of the California Association of Realtors,
10 a trade association. *See* Amended Statement of Organization (June 12, 2013).² On July 31,
11 2011, the Committee timely filed its 2011 Mid-Year Report covering the period from January 1,
12 2011 through June 30, 2011, which disclosed \$423,972.79 in total contributions received. *See*
13 2011 Mid-Year Rpt. at 3 (July 31, 2011).³ Six-months later, the Committee filed an amended
14 2011 Mid-Year Report on January 31, 2012, which disclosed additional contributions received
15 totaling \$363,223.69. *See* Amended Mid-Year Rpt. at 3 (Jan. 31, 2012).⁴

16 On March 26, 2012, the Reports Analysis Division ("RAD") sent the Committee a
17 Request for Additional Information ("RFAI"), requesting clarification regarding the substantial
18 increase in receipts that were not disclosed in the original filing. RR13L-02 at 2 (California Real
19 Estate Political Action Committee/Federal). Responding to the RFAI, the Committee filed a
20 Miscellaneous Document ("Form 99") on April 27, 2012, stating that:

² *See* http://query.nictusa.com/pdf/468_13962852468_13962852468.pdf?navpanes=0.

³ *See* http://query.nictusa.com/pdf/555_11931531555_11931531555.pdf?navpanes=0.

⁴ *See* http://query.nictusa.com/pdf/859_12950395859_12950395859.pdf?navpanes=0.

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1 In 2011, [the Committee] started using a fundraising database managed by
2 the National Association of Realtors (NAR) and encountered problems
3 during the transition to the new software program. Some online
4 contributions were not posted by NAR until several months after the
5 original report was filed. In addition, other contributions were incorrectly
6 allocated in the database due to a programming error in splitting the
7 contributions. After NAR fixed the formula, there was a substantial
8 increase in contributions allocated to [the Committee], which was
9 reflected in the amended report.

10
11 *Id.*

12 RAD referred the Committee to the Alternative Dispute Resolution Office ("ADRO") for
13 failing to disclose additional receipts totaling \$363,223.69. See Memorandum from Debbie
14 Chacona, Asst. Staff Director, RAD, FEC, to Lynn Fraser, Director ADRO, FEC (Feb. 1, 2013)
15 ("Referral").⁵ On March 26, 2013, ADRO informed OGC that counsel for the Committee stated
16 that the Committee did not wish to resolve the RAD referral through ADRO, so ADRO
17 transferred the matter to OGC. E-mail from Lynn Fraser, Director, ADRO, FEC, to Jeff Jordan,
18 Supervisory Att'y, CELA, FEC (Mar. 26, 2013, 02:49 EST). Thereafter, OGC notified the
19 Committee about this matter on March 28, 2013. Letter from Jeff S. Jordan, Supervisory Att'y,
20 CELA, FEC to M. Iqbal Bholat, Treasurer of the Committee (Mar. 28, 2013); see also *Agency*
21 *Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38,617
22 (Aug. 4, 2009).

⁵ RAD referred this matter to ADRO pursuant to *Reports Analysis Division Review and Referral Procedures for Unauthorized and Authorized Committees for 2011-2012 Election Cycle* at 74 (the "Referral Procedures") (approved by Comm'n Apr. 5, 2011). Standard 7 of those procedures states that a case will be referred to ADRO when (i) an amendment or amendments are filed at least _____ business days after the original report was filed (or after the report due date, whichever is latest); (ii) the amendment or amendments disclose an increase or decrease of more than _____ in receipts, disbursements, or debts; and (iii) for an election-sensitive report, the increase or decrease is in excess of _____ and less than or equal to _____ or for a non-election-sensitive report, the increase or decrease is in excess of _____ and less than or equal to _____. *Id.* In this matter, the increased activity was \$363,223.69, which constitutes an _____ increase in receipts, and occurred on a non-election-sensitive report.

1 In response to the notification, the Committee maintains that the Commission should
2 close the matter without any further action. *See* Letter from Cary Davidson, Legal Counsel for
3 the Committee, to Jeff S. Jordan, Supervisory Att'y, FEC at 2 (May 24, 2013) ("Resp."). The
4 Committee acknowledges that it needed to amend its report, but states that the Committee
5 engaged in virtually no financial activity between the initial and amended filings, and the omitted
6 amount of receipts did not impact the Committee's use of funds. *Id.* at 1. According to the
7 response, other than small fundraising and administrative expenses, the Committee's only
8 expenditure each year is a transfer to its affiliated separate segregated fund, which is not based
9 on the Committee's account balance or receipts. *Id.* The Committee also asserts that it reported
10 the receipts that were identified in its database, but due to a programming error, the applicable
11 software failed to record many of the contributions to the Committee; those contributions were,
12 as a result, omitted from the Committee's data file used to prepare its original 2011 Mid-Year
13 Report. *Id.* at 2. Although the data problem was discovered at the time the original 2011 Mid-
14 Year Report was filed, the Committee states that the problem could not be corrected until the
15 database was reprogrammed. *Id.* The Committee amended its report after its database was
16 reprogrammed and the Committee was confident that the revised figures were accurate. *Id.* The
17 situation, the Committee states, is unique, and not likely to be repeated. *Id.*

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III. LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 2 U.S.C. § 434. 2 U.S.C. § 434(a)(1); 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the total amount of receipts, including the appropriate itemizations, where required.

2 U.S.C. § 434(b); 11 C.F.R. § 104.3(a).

Here, the Committee did not comply with the Act's reporting requirements when it failed to disclose a total of \$363,233.69 in receipts on its original 2011 Mid-Year Report. *See Resp.* at 1-2. We therefore recommend the Commission find reason to believe that the Committee violated 2 U.S.C. § 434(b).

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V. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that California Real Estate Political Action Committee/Federal – California Association of Realtors and M. Iqbal Bholat in his official capacity as treasurer violated 2 U.S.C. § 434(b).
3. Approve the attached Factual and Legal Analysis.
4. Enter into conciliation with California Real Estate Political Action Committee/Federal – California Association of Realtors and M. Iqbal Bholat in his official capacity as treasurer prior to a finding of probable cause to believe.
- 5.

6. Approve the appropriate letter.

Daniel A. Petalas
Associate General Counsel

8-21-13
Date

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